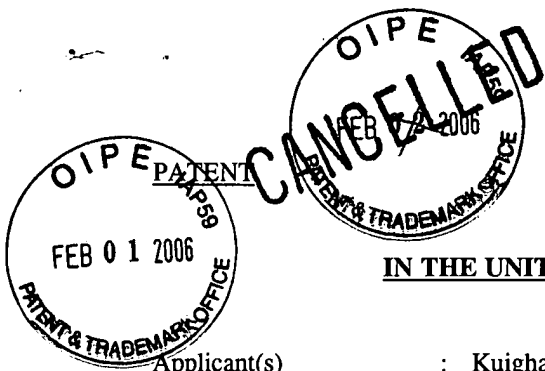


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Docket No. 845-002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Kuighadush
Serial No. : 09/669,245
Filed : September 25, 2000
Title : RETRACTABLE STRAW FOR DRINKING CONTAINERS

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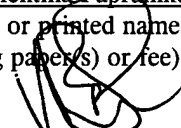
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Attorney Docket No.: 845-002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re application of
Kuighadush

Examiner: Stephen Cronin
(Joseph Moy)

Serial No: 09/669,245

Art unit: 3727

Filed: September 25, 2000

For: RETRACTABLE STRAW FOR DRINKING CONTAINERS

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REPLY BRIEF

Mail Stop Appeal Brief-Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sirs:

In response to the Examiner's Answer dated December 1, 2005, Appellant hereby submits this Reply Brief under 37 CFR 41.41.

ARGUMENT

Appellant begins by acknowledging that Examiner Moy appears to have been replaced by Primary Examiner Stephen Cronin for the purposes of the Examiner's Answer.

Appellant further thanks the Examiner for clarifying that the rejection of the claims under 35 U.S.C. § 112 does not apply to claims 22-25. As Such, Appellant requests that the Board of Patent Appeals and Interferences review these claims only with regard to the substantive prior art rejections under 35 U.S.C. § 102.

Turning now to the issue on appeal, Appellant takes this opportunity to re-affirm all of the positions set forth in the Appeal Brief. Furthermore, in response to the Examiner's Answer, Appellant submits the following remarks:

On page 4 of the Examiner's Answer under section "(10) Response to Argument," the Examiner states that:

"As to the declarations submitted by the applicant under 37 CFR 1.132, these are deficient for the following reasons. Each of the declarations fails to establish that the person giving the declaration is of "ordinary skill in the art." Further, the statements contained in each are based upon opinion and not fact."

Appellant respectfully disagrees with both positions.

On the issue of qualifications, Appellant submitted the declarations during prosecution to show that one of ordinary skill in the art would readily identify that the dotted line representation of the bottom half of the straw in Figs. 9a and 9b in fact defines this portion of the straw as 1) running parallel to the edges of the container; and 2) being attached to the side wall. Such declarations are to combat the conclusory remarks of the Examiner who argued instead that the dotted representation of the lower portion of the straw was to only show generally that it is within the container and not in some specific location.

To be one of ordinary skill in the art to comment on such an issue, one would have to be either familiar with technical drawings or with straw manufacturing.

To this end, Appellant presented three declarations, the first of which is from Mr. Daniel Kamel. Paragraphs 1 and 2 of the Kamel declaration set forth his qualifications for being one of ordinary skill in the art.

Specifically, Mr. Kamel's declaration states:

"I am presently employed as an Architectural Designer at Dargah Design. I hold a Bachelor of Science degree (1986) in Architecture from City University of New York. I have extensive experience in architecture, specifically residential design.

2. During my academic studies and professional career I have been involved in numerous architectural designs. My projects involved extensive amount of drawing and drafting, either manually or by computer software. This experience allows me to understand and interpret structural drawings."

The next declaration is from Mr. Jacob Cohen. Paragraphs 1 through 3 of the Cohen declaration set forth his qualifications for being of ordinary skill in the art.

Specifically, Mr. Cohen's declaration states:

"1. I am an owner of Plastirun Corporation . Plastirun is a manufacturing company that produces a variety of products including Straws, Sip Stix, Bar Stirrers, and Paper Plates. My responsibilities include the day to day management of the company and operation of various manufacturing machines within our plant.

2. I hold a Bachelor of Science Degree (1982) in Mechanical and Solar Engineering from University of Maryland. Since 1982 I have been involved in Plastirun corporation as an owner and engineer.

3. During my experience in manufacturing straws for over twenty years I have been involved with many drawings. My academic and technical background enables me to understand and interpret mechanical drawings."

The third declaration is from Professor Sidi Berri. Paragraphs 1 through 3 of the Berri declaration set forth his qualifications for being of ordinary skill in the art.

Specifically, Mr. Berri's declaration states:

"1. I am presently employed as Assistant Professor of Mechanical Engineering at the New York City College of Technology, City University Of New York (NYCCT). I hold a bachelor of Science degree from the University Of Science and Technology in Algeria (1991), and a Master of Science degree (1997) and a Doctor of Philosophy degree (2000) in Mechanical Engineering from Polytechnic University, Brooklyn, New York. I am a member of American Society of Mechanical Engineers (ASME).

2. I have conducted extensive research in Mechanical Vibrations, dynamic structures and Finite Elements. I have been teaching at NYCCT since the year 2000.

3. I have taught college courses in design and manufacturing. As part of my academic and teaching experience I have been involved with many design and manufacturing issues. During this time I have prepared, reviewed and interpreted many mechanical drawings."

Furthermore, each of the declarations ends with a statement that they declare under penalty of perjury that the foregoing is true and correct.

As such, Appellant submits that the declarants; a mechanical engineering professor, an architect and a straw manufacturer, are all of at least ordinary skill in the art, and the sworn to declarations are sufficient to establish such.

Regarding the issue of opinion versus statement of fact, it appears that the Examiner is discounting a large portion of the statements contained in the declarations.

The declarations contain the following statements:

"In my opinion, there is no doubt that Figures 9 A and 9 B of the application clearly depict an arrangement wherein the straw is extending against the wall of the container. **This follows because the dotted lines, depicting the straw are extended in parallel with both sides of the surface of the wall that the straw extends along, do not exhibit any ambiguity. They clearly illustrate a straw that extends against the wall of the container. The dotted lines depicting the straw are**

extended in parallel with both sides of the surface of the wall the straw extends along."

This conclusion is even more apparent from Figs. 8A and 8B, wherein the straw is depicted as a straw that is floating within the container. In contrast with Figs 9A and 9B, the dotted lines representing the straw are not parallel with none of the sides of the surface of the walls of the container."

Thus, although the statements do include an opinion that the Examiner's rejection is incorrect, that opinion is clearly supported by their statements of observed facts regarding the drawings. The opinion sentence may not need to be addressed by the Examiner. However, just because one of the sentences contains an opinion, it does not mean that the *entire statement* contained in the declaration can be simply discarded.

As such, Appellant requests that the Board give appropriate consideration to these declarations.

As a second argument, the Examiner later states on the same page 4 of the Examiner's Answer that :

"Finally, if one were to agree that the statements that figures 9a and 9b fully support the claimed limitations, then figure 8a of Cornell et al. would fully show the claimed structure and would therefore have to be considered anticipatory. The side elevation of figure 8a which is shown in figure 8b of Cornell et al. however does not support this conclusion and further supports the rejection of the claims under 35 U.S.C. § 112, first paragraph, since one must conclude that figures 9a and 9b must only show that the straw is in the container, and not specifically against the side wall unless set forth in the specification and/or drawings."

Appellant respectfully disagrees.

First, it appears that the Examiner is misreading the figures in the Cornell patent and improperly comparing to the figures in the present invention. Column 2, lines 1-5 clearly state that Fig. 8a in Cornell is a *front elevation* of the container and that Fig. 8b is

a side elevation. On the contrary, both figures 9a and 9b of the present invention are *perspective view* of the beverage container.

A dotted line on a front elevation can not show position within a container, because it offers only two, not three dimensional perspective. Thus Fig. 8b of Cornell is required to show the position within the container, clearly showing that straw is not attached to or parallel to the side wall of the container.

On the other hand, figures 9a and 9b of the present invention are both perspective views of the straw within the container, which show not only that the lower portion of the straw is inside the container, but also conveys a three dimensional perspective on the location of the straw within the container as well. It is not the dotted lines per se that the appellant is using to demonstrate location within the container, but the actual location of the dotted lines, along the side wall and parallel to the edges upon which appellant is relying. There is nothing inconsistent between Cornell's use of dotted lines in figures 8a and 8b with the present invention's use of dotted lines in figure 9a and 9b because figure 8a of Cornell is two dimensional front elevation and figure 9a and 9b are perspective views.

Secondly, for the same reasons above, and as admitted to by the Examiner, figure 8b of Cornell clearly shows that the lower portion of the straw is not attached to the inside of the side wall of the container as claimed in the present invention. As such, Cornell can not possibly be used as the basis for a 35 U.S.C. § 102 rejection of the claims.

Appellant respectfully submits that the present invention as claimed is now in condition for allowance, and requests that the either the Examiner retract the new matter

Application No. 09/669,245

Reply Brief Dated February 1, 2006

In response to Examiner's Answer Dated December 1, 2005

and prior art rejections and deem the claims allowed in view of the cited prior art, or, alternatively, that the Patent Board of Appeals reverses the rejections of the Examiner and remands it to the Examiner for issuing of a Notice of Allowance as requested by Appellant in the Appeal Brief.

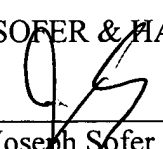
Respectfully submitted

SOFER & HAROUN, LLP

Dated:

2/1/06

By:



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